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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/709,527	11/13/2000	David J. Stucky	196261US55DIV	4882

22850 7590 07/23/2002

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EXAMINER

KUHNS, ALLAN R

ART UNIT	PAPER NUMBER
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1732

DATE MAILED: 07/23/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

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## Office Action Summary

Application No.

09/709,527

Applicant(s)

STUCKY ET AL.

Examiner

KUHN S

Group Art Unit

1732

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE (3) MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

☒ Responsive to communication(s) filed on MAY 7, 2002

☒ This action is **FINAL**.

- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 15-17, 21 AND 23-25 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 15-17, 21 AND 23-25 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement

## Applicant Papers

- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some\* ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

## Attachments

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 7
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

Office Action Summary

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1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 15-17, 21, 23 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cope (5,847,016) as set forth in the previous Office action. Cope discloses the use of a blowing agent quantity within the claimed range, and it is submitted that it is inherent in the practice of the process of Cope that use of such quantity of blowing agent (when activated) produces a foam having a specific gravity within the claimed range of 1.07 g/cc.

3. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cope as applied to claims 15-17, 21, 23 and 25 above, and further in view of Ansted. At column 4, lines 17-48, Ansted teach or suggest the aspect of using "self drilling" screws to anchor a foam such that no predrilling is required. It would therefore have been obvious to one of ordinary skill in the art that foam material, such as that of Cope, is capable of being countersunk by screw fasteners without predrilling because the screws of Ansted are in fact self drilling. The screws of Ansted are not in fact countersunk because of the space occupied by base flange 47.

4. Applicant's arguments filed May 7, 2002 have been fully considered but they are not persuasive. Applicant argues that while Cope contains claims that encompass using 0.2-5 parts (by volume) of blowing agent, none of the examples in the reference show the required (instantly

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claimed) 1.0 to 1.5 parts of blowing agent. But it is submitted that the disclosure of Cope is not limited to its examples.

Applicant further argues that even if one were to assume a 1:1 correlation between phr and parts per volume, there is no suggestion in Cope that requiring a blowing agent concentration within the claimed range would provide a product from their process with a specific gravity of 1.07 g/cc or less. But, to the examiner, what is involved here are physical properties of a polymer and blowing agent, such that, with the gas formed upon activation or vaporization of a blowing agent amount within the claimed range (as taught by Cope), it is submitted that one of ordinary skill in the art would have expected a foam to form having a density within the claimed range.

Applicant further argues that there is certainly no suggestion regarding these properties and the ability to countersink a screw into the product without predrilling. But such a suggestion is provided by the operation of the self drilling screws of Ansted, now relied upon.

Applicant also refers to a Declaration by David Stucky filed in a parent application which concerns the ability to countersink a screw (without predrilling) when the claimed blowing agent and density requirements are met. Even if the fact that the Declaration was filed with another application is ignored, the Declaration on its face is not commensurate with any claim except claim 24 since only that claim deals with the ability to countersink a screw. In fact, it is submitted that the Declaration is not even commensurate with claim 24 because paragraph 5 of

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the declaration describes reducing screw failure “without countersinking of screws or pre-drilling” while claim 24 addresses the capability of having a screw fastener countersunk.

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Allan Kuhns whose telephone number is (703) 308-3462. The examiner can normally be reached on Monday to Thursday from 7:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jan Silbaugh, can be reached on (703) 308-3829. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7718.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

*Allan R. Kuhns*

**ALLAN R. KUHNS**  
**PRIMARY EXAMINER** AU 1732

7-12-02